Two Judicial Actions Affect

Rights of Defendants

New York Bench Discards Durham Rule on Insanity

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By Dan Morgan
Washington Post Staff Writer

Citing the evolution of psychiatric knowledge, New York's prestigious Second U.S. Circuit Court of Appeals has broadened the guidelines for declaring criminal defendants insane.

But the Court, in falling in line with a growing number of appellate jurisdictions in the nation, stopped short of endorsing the insanity doctrine set forth in the 1954 Durham decision of the U.S. Court of Appeals here.

Instead, on Monday it adopted the definition of criminal responsibility developed during a ten-year study by the American Law Institute.

Though Durham and the Law Institute's suggested Model Penal Code differ, both reject the century old M'Naghten Rule, a segment of English common law that says a defendant is innocent if it can be proved that he could not tell whether his illegal actions were right or wrong.

Durham holds that a defendant can be acquitted by reason of insanity if his act was a "product" of mental illness or defect.

The Law Institute Code says a defendant is not responsible for a crime if he suffers from a mental disease that deprives him of a "substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the law."

The Code also says that any incapacity is not enough to justify incompetence, but neither does total mental incapacity have to be proved.

In discarding M'Naghen, the New York Appeals Court said that standard was no longer applicable now that psychiatry has "evolved from tentative, hesitant gropings in the dark of human ignorance to a recognized branch of modern mediciane."

In his opinion, Judge Irving R. Kaufman carefully considers the Durham Rule, but finally rejects it.

"The most significant criticism of Durham," he wrote, "is that it fails to give the fact finders (the judge or jury trying the case) any standard by which to measure the competence of the accused. As a result psychiatrists when testifying that a defendant suffered from mental disease or defect in effect usurp the jury's function."

Judge Kaufman notes that the clarifying McDonald decision, handed down by the U.S. Court of Appeals here in 1963, substantially corrected this drawback by saying that judges and juries—not psychiatrists — have the final say on whether a defendant is criminally responsible.

But he noted that "it has been suggested that Durham's insistence that an offense be the 'product' of a mental disease raised near impossible problems of causation, closely resembling those encountered by the M'Naghten and irresistible-impluse tests."

The Court said the ALI's standard recognizes that mental disease can impair the

Associated Press

MINORITY LEADER—Candid view of Senate Minority leader Everett Dirksen of Illinois as he held a press conference yesterday on Capitol Hill.

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High Court Debate Swirls About Police Powers in Criminal Cases

By John P. MacKenzie
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The debate over police powers vs. prisoners' rights took on a new dimension yesterday in the Supreme Court as one justice said the real question is the individual's relationship to the state.

Much of the debate, which is reaching a climax this week in arguments of five criminal cases, has centered on whether police work will be shackled if prisoners are required to have a lawyer.

Specific issues before the Court include: The precise point at which a suspect must be warned of his rights to remain silent and obtain counsel; whether the right to counsel applies only if a defendant asks for an attorney, and which denials of rights will render a confession inadmissible in court.

As lawyers' arguments swirled around these issues, Justice Abe Fortas protested. "The trouble, I must say, is that I hear so much reference to the problem as one of how to convict people who commit crimes," he said.

"We are not dealing here just with the criminal and society," he said, "It is a problem of the state and the individual in the large, total sense.

The Justice spoke after a Brooklyn prosecutor, William I. Siegel, contended that confessions were reliable evidence of guilt, often the best evidence available.

"I suppose that prior to the Magna Carta and the Bill of Rights most people convicted were criminals," Fortas said. "Nevertheless the wisdom of the ages has provided safeguards . . . designed to eliminate the unusual case of the unjustified conviction and lay out a standard for the relationship of the state to the individual."

Siegel, arguing to uphold the robbery conviction of Michael Vignera, said Fortas was speaking of an ideal.

Fortas persisted. He said he supposed Communist nations convict the guilty efficiently, "but I equally suppose you join me in horror at convictions obtained without counsel or fair trial."

Siegel said he agreed, but added, "the immediate objective is to protect society" so as to give citizens a chance to strive for their ideals.

"Don't you think," said Justice Hugo L. Black, "that the Bill of Rights had something to do with that balance?"

Siegel said the Bill of Rights did not spell out how the rights should be implemented. He noted that the American Law institute is developing a set of rules to do just that.

Vignera's conviction came under heavy attack from Victor M. Earle III, court-appointed lawyer from New York. Earle said Vignera, already identified by the robbery victim, was questioned by a prosecution lawyer but never advised that he, too, could have a lawyer.

Earle said Vignera was entitled to counsel "the moment the State proceeded against him unless the State could show he freely waived his right. He said the Court had abandoned old concepts of the "voluntariness" of a confession in its 5-to-4 decision in the 1964 Danny Escobedo case. In that ruling, the court threw out a confession obtained when police refused to let a suspect see his lawyer.

In another case, from a Federal court in California, Solicitor General Thurgood Marshall argued that the standard FBI warning is a sufficient safeguard and the Government is not required to go further and provide a lawyer. FBI agents generally advise suspects that they may hire a lawyer and need not answer questions.

mind in a variety of ways—ways that are now understood by modern psychiatry.

The case in New York involved a 35-year-old narcotics addict, who had been convicted of selling heroin despite the fact that his attorney raised the insanity issue at the trial. The Appeals Court reversed the conviction.

The decision will apply to all Federal Courts in the Circuit, which embraces New York, Connecticut and Vermont.

Ten years after Durham was handed down, only Maine had adopted the doctrine. Meanwhile, the 10th and 3d Circuit Courts of Appeal have substantially endorsed the ALI standard.

Herbert Wechsler, professor of constitutional law at Columbia University, wrote in an article in 1962 that one drawback in Durham is the ambiguity of the word "product."

Wechsler said the Model Penal Code criteria resolve the ambiguity by focusing attention on how a defendant's particular mental disease affects his self-control.

The problem with M'Naghten, wrote Wechsler, is that a person may know right from wrong but still suffer from a defect that destroys his self-control.

Following the Durham decision here, there was some confusion over whether juries could disagree with expert testimony of psychiatrists.

Then the U.S. Court of Appeals handed down its clarifying McDonald decision.

Many observers have said the Durham decision became more workable in the post-McDonald period.